



January 3, 2002

Ms. Ruth H. Soucy  
Deputy General Counsel  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2002-0041

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156812.

The Comptroller of Public Accounts (the "comptroller") received a request for information related to certain court cases and administrative proceedings and information related to the meaning of "debt" as defined by section 171.109(a)(3) of the Tax Code. You advise that you are releasing some of the information and that some of the requested information does not exist. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted sample of information.<sup>1</sup>

As you acknowledge, "information that is also contained in a court record" is subject to required public disclosure under section 552.022(a)(17) of the Government Code. Section 552.022(a) of the Government Code provides that this information is not excepted from required disclosure under the Act unless the information is expressly confidential under other law. Section 552.101 is considered other law for purposes of section 552.022.

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<sup>1</sup>We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 111.006(a)(2) of the Tax Code makes confidential "all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer." Chapter 171 of the Tax Code, which pertains to franchise tax, has a similar confidentiality provision, making the following information confidential:

- (1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or
- (2) information, including information about the business affairs, operations, profits, losses, or expenditures of a corporation, obtained by an examination of the books and records, officers, or employees of a corporation on which a tax is imposed by this chapter.

Tax Code § 171.206. Some of the submitted documents, which relate to a franchise tax audit and dispute, were created by a taxpayer. Thus, these documents are confidential in their entirety and must not be released pursuant to section 171.206 of the Tax Code.

The Respondents' Motion for Leave to File Respondent's Supplemental Brief, the Respondents' Supplemental Brief, Defendants' Answers to Plaintiff's Interrogatories and Request for Production, Defendants' Supplemental Answers to Plaintiff's Interrogatories and Request for Production, and the Notice of Tax Due were generated by the comptroller and not by the taxpayer. However, they contain information obtained from records required to be filed with the comptroller or obtained during the course of an examination of the taxpayer's records for purposes of section 171.206 of the Tax Code, which must be withheld. The comptroller must also withhold the information that identifies the taxpayer pursuant to sections 111.006 and 171.206. *See* Attorney General Opinion H-223 (1974).

The submitted documents also contain an Agreed Judgment. Because the Judgment was filed by both the taxpayer and the comptroller, the comptroller must not only redact the identity of the taxpayer but also withhold information contained in the joint motion that was obtained from records required to be filed with the comptroller or obtained during the course of an examination of the taxpayer's records, pursuant to section 171.206 of the Tax Code.

We have marked the information that you must withhold pursuant to section 552.101 of the Government Code in conjunction with sections 111.006 and 171.206 of the Tax Code. You must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Kristen Bates". The signature is fluid and elegant, with the first name "Kristen" and last name "Bates" clearly distinguishable.

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 156812

Enc. Submitted documents

c: Mr. Richard E. V. Harris  
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(w/o enclosures)